IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

MFA.No. 357 of 2001(D)

OPMV.2313/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MANJERI DT.28.6.2000.

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APPELLANT: 3rd RESPONDENT

UNITED INDIA INSURANCE CO. LTD.,
MALAPPURAM REP.BY ITS ASST. MANAGER,
3RD PARTY CLAIMS CELL, IV,
VETTUKATTIL BUILDING, JOSE JUNCTION,
KOCHI 16.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

RESPONDENTS: PETITIONER/ AND RESPONDENTS 1 & 2
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1. **KOCHIYIL KOCHAMPALLY MOIDEEN,**
   26 YEARS, S/O.UMMER HAJI, NEDIYIRUPPU
   AMSOM DESOM, ERNAD TALUK, MALAPPURAM DISTRICT.

2. **C.P.ABDUL KHADER, S/O. MOHAMMEDKUTY HAJI,**
   RAMANATTUKARA, MALAPPURAM DISTRICT.

3. **KOLLOLI AYISHA BEEVI, W/O. MOHAMMED SALEEM,**
   DARUL AMAN, MORAYOOR,
   MALAPPURAM DISTRICT.

BY ADV. SRI.C.P.MOHAMMED NIAS - R2 & R3
SRI.V.V.ASOKAN
SMT.S.AMINA - R1

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.F.A NO.357/2001

ORDER ON CMP. NO.6262/2002 IN MFA. NO.357/2001

DISMISSED

29.06.2007 **SD/- J.B.KOSHY, JUDGE**

SD/- K.P.BALACHANDRAN, JUDGE

/TRUE COPY/

P.A. TO JUDGE

tss

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. No. 357 of 2001

Dated this the 29th day of June, 2007

Judgment

Koshy, J.

First respondent in this case met with an accident due to the negligence of the driver of the motor vehicle insured by the appellant. Tribunal awarded total compensation of Rs.4,16,000/- as compensation and directed the insurance company to deposit the compensation.

2. Finding of negligence on the driver of the vehicle insured by the appellant and quantum of compensation are disputed. With regard to finding of negligence, claimant was examined and he deposed that accident occurred solely due to the negligence of the driver of the car (first respondent before the tribunal) insured by the appellant. There was no serious cross-examination. F.I.R. was also produced to show the same. Insurance company did not produce any document or oral evidence to contradict the version. Therefore, tribunal found that accident occurred due to the negligence of the driver of the car insured by the appellant. We see no

grounds to differ from the finding on the basis of evidence in this case.

3. With regard to quantum of compensation, the main contention is that tribunal fixed Rs.4,000/- as monthly income. According to the claimant, he was employed as a mechanic in Gulf and was earning Rs.15,000/- equivalent in a month. He produced Ext.A7 passport to show that he was working in Gulf from 1991 onwards. This time he returned after two and a half years in Gulf. According to him, he came here for six months' leave as he did not take any leave for two and a half years. Entries in the passport supports the above contention. Tribunal did not accept the plea that he was getting Rs.15,000/- in Gulf as no salary certificate was produced. However, since he was working in Gulf and he was a mechanic, tribunal fixed Rs.4,000/- as monthly income. We see no reason to reduce the monthly income awarded by the tribunal.

4. As a result of the accident, he was hospitalised for 87 days in the Medical College Hospital, Calicut. He further stated that thereafter he had taken inpatient treatment for the period from 2.12.19194 to 23.12.1994, 30.12.1994 to 4.1.1995, 6.3.1995 to 13.3.1995

and from 10.4.1995 to 24.4.1995. Ext.A2 copy of the wound certificate relating to the petitioner shows that when he was being examined from the K.P.M.Hospital, he was found to be having evidence of fracture of right femur and compound fracture of right leg. Ext.A2 further shows that the petitioner was referred to the Medical College Hospital, Calicut. It can be seen from Ext.A3 index card that on 30.7.1994 the petitoner was admitted in the Medical College Hospital, Calicutl and discharged on 22.10.1994 and he has sustained fracture shaft of right femur and both bones of right leg and he was treated by surgical debridement, K. nailing followed by cast bracing. Ext.A4 series are the discharge summaries. One of the discharge summaries shows that the petitioner had taken inpatient for the period from 10.4.1995 to 24.4.1995 and he had undergone operation on 13.4.1995 in the Al Shifa Hospital, Perintalmanna. The other discharge summary shows that he had also taken inpatient treatment for six days in the same hospital and K nail was removed on 2.9.1999. Ext.A5 is the treatment certificate land Ext.A5 (a) is the disability certificate. Ext.A6 series are the prescriptions. Since he deposed that he can stand and walk only with support

of a stick, he was referred to the Medical Board, District Hospital, Manjeri and Ext.X1 is the disability certificate issued by the Board. It is stated in Ext.X1 that on examination there is shortening of thigh segment by 1 inch and legment by 1 1/2 inch. His movement almost normal. There is thickening and angulation of right tibia with 20 degree angulation medially. Ankle joint and subtalar movement absent. Ankle with the plantar grade position. Atrophic right big toe. There is an ugly looking scar in front of right leg. His permanent disability is assessed at 21%. Tribunal accepted the same and calculated compensation. We are of the view that calculation of compensation for 21% loss of earning power needs no interference in view of the certificate. Apart from granting compensation for loss of earning power, tribunal has granted compensation for disability at Rs.60,000/-. We are of the view that when Rs.70,000/- was granted for loss of actual earnings and Rs.1,81,000/- for loss of earning power, compensation for disability cannot be granted apart from compensation for loss of earing power. Rs.1,81,000/- was granted for loss of earning power consequent to the disability and hence Rs.60,000/= awarded for disability has to be deducted

from total compensation calculated. Rs.10,000/- was awarded for disfigurement. He was a married man. No compensation need be granted for disfigurement. When disability was assessed by the medical board scar on the leg was noticed. Hence, we are of the opinion that claimant is not entitled to compensation separately for disfigurement. Tribunal has awarded damages to clothing at Rs.2,000/- and bystanders' expenses at Rs.18,000/-. These amounts were granted without any sufficient materials. We reduce the same to half. Thus, from the total compensation awarded Rs.80,000/= has to be deducted. Thus, total compensation payable will be Rs.3,36,000/- (instead of Rs.4,16,000/-) with interest and cost as awarded by the tribunal.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A.NO.357/2001

JUDGMENT

Dated:29th June, 2007